

COPS Grant Management

Training

Legal Requirements: Nonsupplanting, Retention, and Allowable Costs

Office of Community Oriented Policing Services

COPS Office Legal Division

Nonsupplanting Requirement

Nonsupplanting - Background

The nonsupplanting requirement is a legal requirement found in the Public Safety and Community Policing Act of 1994, which established the COPS program.

The nonsupplanting requirement applies to all COPS funding awarded to state, local, and tribal governments.

Nonsupplanting - Statute

The nonsupplanting requirement of the COPS statute states that COPS grant funds “shall not be used to supplant [replace] state or local funds, or, in the case of Indian tribal governments, funds supplied by the Bureau of Indian Affairs, but shall be used to increase the amount of funds that would, in the absence of federal funds received [from the COPS program], be made available from state or local sources, or in the case of Indian tribal governments, from funds supplied by the Bureau of Indian Affairs.” 42 U.S.C. §3796dd-3(a).

Nonsupplanting - Statute

What does the nonsupplanting requirement mean?

COPS funding must not be used to supplant (replace) state, local, or Bureau of Indian Affairs (BIA) funds that would have been dedicated to the COPS-funded item(s) in the absence of the COPS award.

Rather, COPS funding must be used for personnel, equipment and technology, or other approved grant costs, over and above what the grantee's budget otherwise funded or would have funded for such costs with state, local, or BIA funds in the absence of COPS funding.

Application of Nonsupplanting to COPS Awards

Keys to avoiding a supplanting violation:

- 1) Hire or purchase only new, additional personnel or equipment/technology, and/or other approved costs;
- 2) Pay only for personnel hired, equipment purchased, and/or other approved costs incurred on or after the award start date; and
- 3) Make sure the grant-funded purchases or hires are over and above the number of positions, equipment/technology, and/or other approved costs that otherwise would have been funded by the grantee in the absence of the COPS grant.

Application of Nonsupplanting to COPS Awards

May a grantee use COPS funding on existing personnel, equipment or other costs?

No. As a general matter, COPS funds may only be used to fund new, additional personnel, equipment, and/or other approved costs.

Grantees must continue to spend the same level of state, local, or BIA funds on these items in addition to funding the new items or personnel with the COPS grant funds.

Application of Nonsupplanting to COPS Awards

May a grantee use COPS funding to pay for costs incurred prior to the award start date?

Generally speaking, no. COPS funding may only be used to pay for personnel hired, equipment/technology purchased, and/or other costs incurred on or after the grant award start date.

Exception: The COPS Office may authorize a grantee to use COPS funds for pre-award costs if the grantee can prove (with supporting documentation) that it incurred the pre-award costs in specific anticipation of receiving the COPS grant and would not otherwise have purchased or hired the additional items or personnel.

Application of Nonsupplanting to COPS Awards

After receiving a COPS grant, may a grantee then make adjustments to its budget to shift its own funding to other law enforcement purposes?

No. COPS grantees receiving funds to purchase additional technology, for example, must increase their own technology budget - they may not shift their own technology funds into another law enforcement (or other) purpose as a result of receiving the grant.

Most Common Nonsupplanting Issues

Early Hire/Purchase

- 1) Use of COPS funds to pay for personnel hired prior to the award start date.
- 2) Use of COPS funds to pay for equipment and/or technology purchased prior to the award start date.
- 3) Use of COPS funding to pay for other costs incurred prior to the award start date.

Reduction in Force/Funding - Reducing/eliminating local funding for personnel and/or equipment/technology/other award-related costs as a direct result of receiving COPS grant funding for these purposes.

Failure to Fill Locally-funded Vacancies - Deliberately delaying hiring new personnel to fill locally-funded vacancies as a direct result of receiving COPS grant funding for additional personnel in the same area (e.g., sworn officers or civilians).

Frequently Asked Questions: Nonsupplanting

Is it a violation of the nonsupplanting requirement to use COPS grant funds to pay for an officer/civilian, equipment/technology, and/or other award costs hired/purchased prior to the award start date?

Yes, unless the grantee can demonstrate through documentation that the pre-award costs were incurred in specific anticipation of the receipt of COPS funding and would not have occurred in the absence of the anticipated COPS award.

Grantees should obtain written approval from the COPS Office before spending COPS grant funds on any costs incurred pre-award.

Frequently Asked Questions: Nonsupplanting

What are examples of supporting documentation to show that early hires/purchases were made in specific anticipation of receiving COPS grant funds?

- Budget documents
- Local council meeting minutes discussing the hiring/purchase
- Letter to the officer/civilian indicating that employment is contingent upon the receipt of COPS funding or letter to the vendor indicating that the purchase is contingent on the receipt of COPS funding
- Letter(s) from the law enforcement executive and government executive stating that the officer/civilian was hired in specific anticipation of receiving COPS funds, or that the purchase was made in specific anticipation of receiving COPS funds.

Frequently Asked Questions: Nonsupplanting

Is it a violation of the nonsupplanting requirement to continue using COPS hiring grant funds after experiencing a local reduction in force/funding (“RIF”)?

Yes, unless the grantee can demonstrate through documentation that the reduction occurred for reasons unrelated to the receipt of COPS funding (such as fiscal distress, organizational restructuring, or civilianization plans) and that the reduction therefore would have occurred even in the absence of the COPS funding.

Grantees should obtain written approval from the COPS Office before spending COPS hiring grant funds following a local RIF.

Frequently Asked Questions: Nonsupplanting

What are examples of supporting documentation to show that a RIF was unrelated to the receipt of COPS grant funds?

- Budget documents
- Local council meeting minutes discussing the reasons for the RIF
- Internal memoranda discussing the reasons for the RIF
- Evidence of other local departments experiencing reductions
- Letter(s) from the law enforcement executive and government executive stating that the RIF occurred for reasons unrelated to the receipt of COPS funding, and that the reduction would have occurred even in the absence of the COPS funding.

Frequently Asked Questions: Nonsupplanting

Is it a violation to delay filling locally-funded vacancies during the implementation of a COPS hiring grant?

Yes, unless the grantee can demonstrate through documentation that the delay in filling locally-funded vacancies occurred for reasons unrelated to the receipt of COPS grant funding (such as fiscal distress, a local hiring freeze, a vacancy held open during an officer's military leave or during a disciplinary proceeding, or an inability to find a qualified applicant despite actively recruiting) and therefore would have occurred even in the absence of COPS funding. Otherwise, grantees must take active and timely steps through their standard recruiting and hiring process to fill all locally-funded vacancies during the COPS grant period.

Grantees should obtain written approval from the COPS office before spending COPS hiring grant funds following a decision to delay filling locally-funded vacancies.

Frequently Asked Questions: Nonsupplanting

What are examples of supporting documentation to show that a delay in filling locally-funded vacancies was unrelated to the receipt of COPS funds?

- Documents explaining the grantee's standard procedures for filling vacancies;
- Documents illustrating the (unsuccessful) hiring steps that the grantee has taken (e.g., copies of vacancy announcements, letters regarding testing or interviews, offer letters);
- Documents illustrating why the grantee has *not* taken active and timely recruiting steps (e.g., copies of documents reflecting hiring freezes, extended employee military or other leave, and related agency policy regarding vacancies);
- Letter(s) signed by the law enforcement executive and government executive explaining the reason(s) for the vacancies and addressing whether the grantee would have maintained these vacancies in the absence of the COPS funding.

Frequently Asked Questions:

Nonsupplanting

The COPS Office says that COPS hiring grant funds may not be used to pay for existing personnel. But . . . may a grantee *promote* an existing locally-funded *part-time* officer to a COPS-funded full-time position?

Yes, but only if the grantee “backfills” the part-time position with local funds prior to the expenditure of COPS funds on the new full-time position.

Grantees should obtain written approval from the COPS Office before spending COPS hiring grant funds on a promoted full-time officer.

Common Supplanting Scenarios

Background: An agency applied for a COPS Technology Initiative grant on June 6, 2007, for communication equipment. On July 6, 2007, it entered into a contract with a vendor to purchase the equipment. The contract was not contingent upon the receipt of COPS grant funds. Subsequently, the agency received a Technology Initiative grant with an award start date of August 1, 2007.

Violation: If the grantee uses COPS funding to pay for this communication equipment, it will violate the nonsupplanting requirement because it previously committed to purchase the equipment with local funds when it signed the contract.

Remedy: If the grantee has not yet expended COPS funds, it may explore modifying the grant to cover other new technology purchases (over and above the locally-funded purchase). If the grantee expended the COPS funds on this purchase in violation of the nonsupplanting requirement, however, it must repay those funds to the COPS Office.

Common Supplanting Scenarios

Background: A grantee received a COPS in Schools award for one full-time officer. The grantee promoted one of its locally-funded part-time officers to the COPS-funded full-time position, but it did not backfill the locally-funded part-time position until several months later.

Violation: If the grantee uses COPS funding to pay the salary and benefits of the promoted full-time COPS-funded officer before filling the locally-funded part-time position, it will violate the nonsupplanting requirement.

Remedy: Repay to the COPS Office the amount of COPS funds expended on the full-time position during the period that the part-time position remained vacant.

Common Supplanting Scenarios

Background: A grantee budgets for 10 locally-funded officer positions. It receives a COPS Universal Hiring Program (UHP) award which provides funding for three full-time officer positions with an award period of September 1, 2005 through August 31, 2008. On December 1, 2005, the grantee hired two more locally-funded officer positions, bringing its baseline to 12 officer positions. On July 1, 2007, the grantee eliminated three locally-funded officer positions from its budget, thereby reducing its baseline to 9 locally-funded officers.

Violation: If the grantee eliminated the three locally-funded officer positions in July 2007 as a direct result of receiving the COPS UHP funds for three additional officers, the use of the COPS UHP funds following the RIF would violate the nonsupplanting requirement. If the RIF occurred for reasons unrelated to the receipt of COPS funding, then the grantee has not violated the nonsupplanting requirement.

Remedy: If the grantee did violate the nonsupplanting requirement, remedies for this scenario could include repayment of the COPS UHP funds expended following the RIF or, in some cases, budgeting the same amount of money into the local law enforcement budget to hire new, additional officers.

Compliance Tips: Nonsupplanting

- Use COPS funding to:
 - Hire new, additional career law enforcement officers/civilians, purchase new, additional equipment/technology, and/or use funds for other new, additional costs
 - On or after the award start date
 - Over and above other funding that otherwise would be dedicated for such items in the absence of COPS funding
- Maintain and/or increase your locally-funded baseline during implementation of COPS funding
- Remember that when a grantee hires additional locally-funded officers during the grant award period, its locally-funded baseline increases accordingly. *This includes hiring former COPS officer positions with local funds to comply with the retention requirement.*

Retention Requirement

Definition of Retention

What does “retention” mean?

Retention means continuing to fund former COPS officer positions with state, local, or BIA funds at the end of the 36-month COPS hiring grant funding period.

COPS-funded officer positions must be retained for a minimum of one full local budget cycle, over and above the number of locally-funded officer positions that the grantee otherwise would fund with state, local, or BIA funds.

Retained positions are added to the grantee’s baseline of locally-funded positions for the purpose of evaluating nonsupplanting compliance for other active COPS hiring grants.

Frequently Asked Questions: Retention

Which COPS grants require retention?

COPS Universal Hiring Program (UHP)

COPS in Schools (CIS)

Tribal Resources Grant Program - Hiring (TRGP)

Funding Accelerated for Smaller Towns (FAST)

Accelerated Hiring, Education, and Deployment (AHEAD)

Making Officer Redeployment Effective (MORE)

Frequently Asked Questions: Retention

What are examples of retention funding sources?

- New local appropriations
- State grants, if allowed by their guidelines
- Private donations
- Local revenue initiatives
- Other non-federal funds not previously dedicated to specific law enforcement purposes
- Other federal grant funds IF specifically authorized by the law governing those grants

Frequently Asked Questions: Retention

Does “one full local budget cycle” mean “one full year”?

Not necessarily.

Grantees must retain the additional positions for one full local budget cycle (e.g., January 1 - December 31, July 1 - June 30, or October 1 - September 30, as set by the grantee government).

This means that grantees must:

- * Retain the positions for the remainder of the budget cycle they are in when the grant expires AND
- * Retain for (at least) one full budget cycle thereafter

Frequently Asked Questions: Retention

When we retain positions from one COPS hiring grant, how do these positions impact the nonsupplanting requirement on other active COPS hiring grants?

The retained officer positions become part of your agency's locally-funded baseline for purposes of subsequent hiring awards. If the retained officer positions are later eliminated, your agency has implemented a reduction-in-force (related to subsequent active hiring awards) and must comply with the nonsupplanting requirement by demonstrating that the RIF is unrelated to your agency's receipt of the subsequent awards.

Your agency should carefully track its separate hiring awards and the implementation and retention periods of each COPS-funded position.

Frequently Asked Questions: Retention

Under the COPS in Schools program, must the COPS-funded School Resource Officer (SRO) be retained in the school?

No. Although the COPS-funded position is not specifically required to be retained in the schools, your agency must still use the additional officer position for the purpose of enhancing community policing.

Frequently Asked Questions: Retention

What if our agency cannot afford to retain the additional positions because of financial hardship?

- Your agency may request a retention exemption if it can demonstrate with supporting documentation that (1) it planned to retain but (2) was unable to retain due to severe fiscal distress.
- If your agency faces this situation, please contact your COPS Grant Program Specialist during the last quarter of the grant period for further guidance.

Frequently Asked Questions: Retention

What happens if our agency receives a retention exemption? What if we are denied an exemption?

- If your agency qualifies for a retention exemption, you will not be required to retain the additional positions. Your agency will not be eligible to receive new COPS grants with a retention requirement for one year beginning at the end of the 36-month grant funding period.
- If your agency does not qualify for a retention exemption, you will be required to comply with the retention requirement. If you fail to retain, your agency will be barred from receiving any new COPS grants for three years beginning at the date of the notice of noncompliance.

Frequently Asked Questions: Retention

My agency received a COPS UHP grant for 30 additional officer positions. Because we hired the officers at different times, the 36-month funding period for each of those 30 positions is ending on 30 different dates. So when does the retention period start - on each of those 30 dates, or on the official award end date for the entire grant?

- The retention period is calculated individually for each officer position - so, in this example, the retention periods will start on 30 different dates.
- But: if your agency can afford to fund all 30 of the additional positions until the grant award end date, and *then* for another full local budget cycle, that system would simplify your tracking of retention compliance.

Common Retention Scenarios

Question: Because it took several months to find a qualified candidate when we first received our grant, our agency has filled the UHP grant position for only 28 months, but our original 36-month grant award period is ending next month. Are we required to retain this position with local funds as soon as the grant period ends?

Answer: No. The retention requirement applies only after the UHP position has been implemented for the full 36 months.

Action: Contact your agency's COPS Grant Program Specialist to request a no-cost extension of time to implement the remainder of the 36-month grant funding period.

Common Retention Scenarios

Question: The original officer whom my agency hired to fill the UHP position resigned six months into the retention period. Are we required to fill this position?

Answer: Yes. You are required to retain the additional UHP position, not the specific individual officer.

Action: You should take timely and active steps in accordance with your standard hiring procedures to fill all locally-funded officer vacancies (which includes the retained UHP position) during the retention period.

Common Retention Scenarios

Question: My agency's local budget cycle is October 1 to September 30, and the CIS grant funding period ended on March 30, 2007. What exactly is my agency's retention period for this grant?

Answer: Your agency must retain the additional CIS positions for (a) the remainder of the budget cycle you are in when the grant ends (until September 30, 2007) and (b) then for one full local budget cycle (October 1, 2007 - September 30, 2008). So your retention period is April 1, 2007 - September 30, 2008.

Action: Budget new, additional local funds to retain the additional CIS positions at least until September 30, 2008. If you have any other active COPS hiring grants, remember that the retained CIS positions are also added to your locally-funded baseline for those grant periods.

Compliance Tips:

Retention

- Maintain accurate personnel and payroll records for all individuals hired under the COPS hiring grants, including all hire and termination dates.
- Monitor and document the number of months each COPS-funded position has been filled.
- Correctly calculate and track the retention periods (start and end dates) for each COPS-funded position.
- Remember that your agency is retaining the additional positions, not just the individual officers originally filling those positions.

Allowable Costs

Definition of Allowable Costs

What is an allowable cost?

Allowable costs are those items that are generally “fundable” under each particular COPS grant program. Different grant programs have different allowable costs, which means that your agency may be authorized to claim certain costs under one COPS grant (e.g., officer uniforms under the TRGP program), but not under a different COPS grant (e.g., the UHP program).

An allowable cost also is a cost that the COPS Office has specifically approved for your agency’s individual grant award. The COPS Office tells grantees what they may purchase and how much they may spend on each allowable cost. Different grantees may have different allowable costs under the same grant program, depending on their grant projects or their own local salary/benefit costs, for example.

Frequently Asked Questions: Allowable Costs

What factors does the COPS Office consider when deciding what costs are allowable under its different grant programs?

- * OMB Circulars A-87 and A-21: Cost Principles
- * Public Safety and Community Policing Act of 1994 (the COPS Statute)
- * Legislative Intent (COPS Appropriations)
- * Available Funding
- * Public Policy

Frequently Asked Questions: Allowable Costs

Where can we find the specific allowable costs for our COPS award ?

For a description of all of the allowable costs for a particular program, review the:

- * Application Kit
- * Grant Owner's Manual

For a list of those allowable costs that the COPS Office specifically approved for your agency's individual grant award, review the:

- * Approved Financial Clearance Memorandum

Frequently Asked Questions:

Allowable Costs

My agency received a COPS Methamphetamine Initiative grant award. We did not originally request funding for laptops, but now we would like to use part of our award to purchase laptops. Since laptops are an allowable cost under the COPS Methamphetamine Initiative, may we use our grant to purchase them?

No, unless you receive an award modification from the COPS Office. If laptops were not a part of your original budget proposal and related funding was not included in the appropriate budget category on your Financial Clearance Memorandum as an allowable cost for your agency's specific grant award, you may not spend your grant funds for laptops (even though they are generally allowable under the program).

For more information on grant award modifications, please contact your COPS Grant Program Specialist.

Common Allowable Costs Scenarios

Background: A grantee used \$60,000 in COPS TRGP-Equipment funding to purchase a vehicle.

TRGP award terms: The grantee's COPS TRGP grant awarded only \$30,000 for the purchase of a vehicle.

Violation: Yes, if the grantee did not receive a grant modification from the COPS Office for this purpose. Using COPS funding in excess of the amount awarded for an item(s) funded under a COPS award is an unallowable cost, even if the item purchased is otherwise allowable.

Remedy: Determine whether the COPS Office may modify this grant award retroactively to cover the costs or repay the excess \$30,000.

Common Allowable Costs Scenarios

Background: A grantee spent all of its COPS Secure Our Schools grant funds over 36 months to pay the salary and fringe benefits of one full-time civilian during that period.

Award terms: The grantee's COPS Secure Our Schools grant awarded funding for two full-time civilian positions for a 24-month implementation period.

Violation: Yes. The grantee violated the allowable costs provision of the award by using all of the funding on one civilian position, rather than the two positions awarded by the grant, and for costs incurred beyond the 24-month implementation period.

Remedy: Repay the Secure Our Schools funding spent (a) in excess of the allowable salary and benefit costs for one full-time civilian during the first 24-month period and (b) 100% of the funds expended thereafter for the additional unallowable 12 months.

Conclusion

- Document, Document, Document!
- Ask, Ask, Ask!
- COPS Office Website:
 - www.cops.usdoj.gov/
- COPS Office Response Center:
 - 1.800.421.6770
- COPS Office Legal Division:
 - 202.514.3750